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15 STEPHEN GOULD CORPORATION

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

18
19 REFLEX PACKAGING, INC.,
20 Plaintiff,
21 v.
22 STEPHEN GOULD CORPORATION,
23 Defendant.

Case No. 5:10-cv-2909 (LHK)

PROTECTIVE ORDER

24 [Complaint Filed: July 1, 2010]

25 AND RELATED COUNTERCLAIMS

26
27
28 Stipulated Protective Order For Litigation
Involving Patents, Highly Sensitive Confidential
Information And/Or Trade Secrets

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery in this action are likely to involve production of
 3 confidential, proprietary, or private information for which special protection from public
 4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
 5 Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated
 6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
 7 all disclosures or responses to discovery and that the protection it affords from public disclosure
 8 and use extends only to the limited information or items that are entitled to confidential treatment
 9 under the applicable legal principles. The parties further acknowledge that this Stipulated
 10 Protective Order does not entitle them to file confidential information under seal; Civil Local Rule
 11 79-5 sets forth the procedures that must be followed and the standards that will be applied when a
 12 party seeks permission from the Court to file material under seal.

13 2. DEFINITIONS

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
 15 information or items under this Order.

16 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how
 17 it is generated, stored or maintained) or tangible things that qualify for protection under Federal
 18 Rule of Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
 20 (as well as their support staff).

21 2.4 Designating Party: a Party or Non-Party that designates information or
 22 items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL" or
 23 "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY".

24 2.5 Disclosure or Discovery Material: all items or information, regardless of
 25 the medium or manner in which it is generated, stored, or maintained (including, among other
 26 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or
 27 responses to discovery in this matter.

1 2.6 Expert: a person with specialized knowledge or experience in a matter
 2 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert
 3 witness or as a consultant in this action, (2) not a past or current employee of a Party or of a
 4 Party's competitor and (3) at the time of retention, is not anticipated to become an employee of a
 5 Party or of a Party's competitor.

6 2.7 "HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY" Information or
 7 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
 8 Party or Non-Party or to House Counsel for a Party would create substantial risk of serious harm
 9 that could not be avoided by less restrictive means.

10 2.8 House Counsel: attorneys who are employees of a party to this action.
 11 House Counsel does not include Outside Counsel of Record or any other outside counsel.

12 2.9 Non-Party: any natural person, partnership, corporation, association, or
 13 other legal entity not named as a Party to this action.

14 2.10 Outside Counsel of Record: attorneys who are not officers, directors or
 15 employees of a party to this action but are retained to represent or advise a party to this action and
 16 have appeared in this action on behalf of that party or are affiliated with a law firm which has
 17 appeared on behalf of that party.

18 2.11 Party: any party to this action, including all of its officers, directors,
 19 employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

20 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
 21 Discovery Material in this action.

22 2.13 Professional Vendors: persons or entities that provide litigation support
 23 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
 24 organizing, storing, or retrieving data in any form or medium) and their employees and
 25 subcontractors.

26 2.14 Protected Material: any Disclosure or Discovery Material that is designated
 27 as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY."

1 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
 2 from a Producing Party.

3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only Protected
 5 Material (as defined above), but also (1) any information copied or extracted from Protected
 6 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
 7 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected
 8 Material. The protections conferred by this Stipulation and Order, however, do not cover the
 9 following information: (a) any information that is in the public domain at the time of disclosure to
 10 a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
 11 a result of publication not involving a violation of this Order, including becoming part of the
 12 public record through trial or otherwise; and (b) any information known to the Receiving Party
 13 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
 14 obtained the information lawfully and under no obligation of confidentiality to the Designating
 15 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

16 4. DURATION

17 Even after final disposition of this litigation, the confidentiality obligations
 18 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing
 19 or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal
 20 of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein
 21 after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
 22 action, including the time limits for filing any motions or applications for extension of time
 23 pursuant to applicable law. For a period of six months after the final disposition of this action, this
 24 court will retain jurisdiction to enforce the terms of this order.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
 27 Party or Non-Party that designates information or items for protection under this Order must take

1 reasonable care to limit any such designation to specific material that qualifies under the
 2 appropriate standards. To the extent it is practical to do so, the Designating Party must designate
 3 for protection only those parts of material, documents, items, or oral or written communications
 4 that qualify — so that other portions of the material, documents, items, or communications for
 5 which protection is not warranted are not swept unjustifiably within the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations that
 7 are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
 8 unnecessarily encumber or retard the case development process or to impose unnecessary
 9 expenses and burdens on other parties) expose the Designating Party to sanctions.

10 If it comes to a Designating Party's attention that information or items that it
 11 designated for protection do not qualify for protection at all or do not qualify for the level of
 12 protection initially asserted, that Designating Party must promptly notify all other parties that it is
 13 withdrawing the mistaken designation.

14 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
 15 Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
 16 protection under this Order must be clearly so designated before the material is disclosed or
 17 produced. Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic
 19 documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the
 20 Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL —
 21 ATTORNEYS' EYES ONLY" to each page that contains protected material. If only a portion or
 22 portions of the material on a page qualifies for protection, the Producing Party also must clearly
 23 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must
 24 specify, for each portion, the level of protection being asserted.

25 A Party or Non-Party that makes original documents or materials available for
 26 inspection need not designate them for protection until after the inspecting Party has indicated
 27 which material it would like copied and produced. During the inspection and before the

1 designation, all of the material made available for inspection shall be deemed "HIGHLY
2 CONFIDENTIAL — ATTORNEYS' EYES ONLY." After the inspecting Party has identified the
3 documents it wants copied and produced, the Producing Party must determine which documents,
4 or portions thereof, qualify for protection under this Order. Then, before producing the specified
5 documents, the Producing Party must affix the appropriate legend to each page that contains
6 Protected Material. If only a portion or portions of the material on a page qualifies for protection,
7 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
8 markings in the margins) and must specify, for each portion, the level of protection being asserted.

9 (b) for testimony given in deposition or in other pretrial or trial
10 proceedings, that the Designating Party identify on the record, before the close of the deposition,
11 hearing, or other proceeding, all protected testimony and specify the level of protection being
12 asserted. Alternatively, when it is impractical to identify separately each portion of testimony that
13 is entitled to protection and it appears that substantial portions of the testimony may qualify for
14 protection, the Designating Party may, before, during or immediately after the completion of the
15 deposition, hearing, or other proceeding, designate that all the testimony given and the entire
16 transcript thereof shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY” until 21 days after the transcript prepared and delivered to counsel.
18 Thereafter, only those portions of the testimony and transcript that are appropriately designated for
19 protection within the 21 days following delivery of the transcript shall be covered by the
20 provisions of this Stipulated Protective Order.

21 Parties shall give the other parties notice if they reasonably expect a deposition,
22 hearing or other proceeding to include Protected Material so that the other parties can ensure that
23 only authorized individuals who have signed the "Acknowledgment and Agreement to Be Bound"
24 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
25 shall not in any way affect its designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL
26 -- ATTORNEYS' EYES ONLY."

10 (c) for information produced in some form other than documentary and
11 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of
12 the container or containers in which the information or item is stored the legend
13 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY". If only a
14 portion or portions of the information or item warrant protection, the Producing Party, to the extent
15 practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
17 to designate qualified information or items does not, standing alone, waive the Designating Party's
18 right to secure protection under this Order for such material. Upon timely correction of a
19 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
20 in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
23 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's
24 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
25 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its
26 right to challenge a confidentiality designation by electing not to mount a challenge promptly after
27 the original designation is disclosed.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
 2 resolution process by providing written notice of each designation it is challenging and describing
 3 the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the
 4 written notice must recite that the challenge to confidentiality is being made in accordance with
 5 this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge
 6 in good faith and must begin the process by conferring directly within 14 days of the date of
 7 service of notice. In conferring, the Challenging Party must explain the basis for its belief that the
 8 confidentiality designation was not proper and must give the Designating Party an opportunity to
 9 review the designated material, to reconsider the circumstances, and, if no change in designation is
 10 offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the
 11 next stage of the challenge process only if it has engaged in this meet and confer process first or
 12 establishes that the Designating Party is unwilling to participate in the meet and confer process in
 13 a timely manner.

14 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
 15 Court intervention, the Designating Party shall file and serve a motion to retain confidentiality
 16 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21
 17 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
 18 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
 19 accompanied by a competent declaration affirming that the movant has complied with the meet
 20 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
 21 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
 22 shall automatically waive the confidentiality designation for each challenged designation. In
 23 addition, the Challenging Party may file a motion challenging a confidential designation at any
 24 time if there is good cause for doing so, including a challenge to the designation of a deposition
 25 transcript or any portions thereof. Any motion brought pursuant to this provision must be
 26 accompanied by a competent declaration affirming that the movant has complied with the meet
 27 and confer requirements imposed by the preceding paragraph.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a Non-Party in connection with this case only for
11 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
12 disclosed only to the categories of persons and under the conditions described in this Order. When
13 the litigation has been terminated, a Receiving Party must comply with the provisions of section
14 13 below (FINAL DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party at a
16 location and in a secure manner that ensures that access is limited to the persons authorized under
17 this Order.

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
19 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
20 disclose any information or item designated "CONFIDENTIAL" only to:

21 (a) the Receiving Party's Outside Counsel of Record in this action, as
22 well as employees of said Outside Counsel of Record to whom it is reasonably necessary to
23 disclose the information for this litigation and who have signed the "Acknowledgment and
24 Agreement to Be Bound" that is attached hereto as Exhibit A;

25 (b) the officers, directors, and employees (including House Counsel) of
26 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
27 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 Disclosure of "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES"

ONLY" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

1 (c) the Court and its personnel;
2 (d) court reporters and their staff, professional jury or trial consultants,
3 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
4 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
5 (e) the author or recipient of a document containing the information or a
6 custodian or other person who otherwise possessed or knew the information; and
7 (f) the individual at the Receiving Party who has full authority to
8 negotiate a settlement of this action and who has signed the "Acknowledgment and Agreement to
9 Be Bound" (Exhibit A) Information regarding the number of units of each product accused of
10 infringement in this Action ("Accused Instrumentalities") that have been manufactured,
11 purchased, sold, imported, exported, or used by or for the Disclosing Party. By receiving such
12 Information regarding the number of units of Accused Instrumentalities manufactured, purchased,
13 sold, imported, exported, or used by or for the Disclosing Party, the Receiving Party shall be
14 deemed to have agreed to use such Information solely for purposes of this action and for no other
15 purpose.

16 7.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY
17 CONFIDENTIAL — ATTORNEYS' EYES ONLY" Information or Items to Experts.

18 (a) Unless otherwise ordered by the Court or agreed to in writing by the
19 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
20 information or item that has been designated "HIGHLY CONFIDENTIAL -- ATTORNEYS'
21 EYES ONLY" pursuant to paragraph 7.3(c) first must make a written request to the Designating
22 Party that (1) identifies the general categories of "HIGHLY CONFIDENTIAL - ATTORNEYS'
23 EYES ONLY" information that the Receiving Party seeks permission to disclose to the Expert, (2)
24 sets forth the full name of the Expert and the city and state of his or her primary residence, (3)
25 attaches a copy of the Expert's current resume, (4) identifies the Expert's current employer(s), (5)
26 identifies each person or entity from whom the Expert has received compensation or funding for
27 work in his or her areas of expertise or to whom the expert has provided professional services,

1 including in connection with a litigation, at any time during the preceding five years and (6)
2 identities (by name and number of the case, filing date, and location of court) any litigation in
3 connection with which the Expert has offered expert testimony, including through a declaration,
4 report, or testimony at a deposition or trial, during the preceding five years.

5 (b) A Party that makes a request and provides the information specified
6 in the preceding respective paragraphs may disclose the subject Protected Material to the
7 identified Expert unless, within 14 days of delivering the request, the Party receives a written
8 objection from the Designating Party. Any such objection must set forth in detail the grounds on
9 which it is based.

10 (c) A Party that receives a timely written objection must meet and
11 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the
12 matter by agreement within seven days of the written objection. If no agreement is reached, the
13 Party seeking to make the disclosure to the Expert may file a motion as provided in Civil Local
14 Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the
15 Court to do so. Any such motion must describe the circumstances with specificity, set forth in
16 detail the reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm
17 that the disclosure would entail, and suggest any additional means that could be used to reduce
18 that risk. In addition, any such motion must be accompanied by a competent declaration
19 describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of
20 the meet and confer discussions) and setting forth the reasons advanced by the Designating Party
21 for its refusal to approve the disclosure.

7.5 "HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY"

27 information may be disclosed to a specifically designated House Counsel of a Party *only if* such

1 disclosure is first agreed to in writing by the Designating Party or upon further order of the Court.
2 Nothing in this Order will preclude such agreement or further order. Any House Counsel allowed
3 to see such information after an agreement or order must sign the "Acknowledgment and
4 Agreement to Be Bound" (Exhibit A) and will be bound by this Order.

5 8. PROSECUTION BAR

6 Absent written consent from the Producing Party, any individual who receives
7 access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information shall not be
8 involved in the prosecution of patents or patent applications relating to thermoformed cushion
9 products, including without limitation the patent asserted in this action and any patent or
10 application claiming priority to or otherwise related to the patent asserted in this action, before any
11 foreign or domestic agency, including the United States Patent and Trademark Office ("the Patent
12 Office"). For purposes of this paragraph, "prosecution" includes directly or indirectly drafting,
13 amending, advising, or otherwise affecting the scope or maintenance of patent claims. To avoid
14 any doubt, "prosecution" as used in this paragraph does not include representing a party
15 challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue
16 protest, ex parte reexamination or inter partes reexamination). This Prosecution Bar shall begin
17 when access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information is first
18 received by the affected individual and shall end two (2) years after final termination of this
19 action.

20 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
21 OTHER LITIGATION

22 If a Party is served with a subpoena or a court order issued in other litigation that
23 compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or
24 "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY" that Party must:

25 (a) promptly notify in writing the Designating Party, and shall include a
26 copy of the subpoena or court order.

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order, and

4 (c) cooperate with respect to all reasonable procedures sought to be
5 pursued by the Designating Party whose Protected Material may be affected.

6 If the Designating Party timely seeks a protective order, the Party served with the
7 subpoena or court order shall not produce any information designated in this action as
8 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY" before a
9 determination by the Court from which the subpoena or order issued, unless the Party has obtained
10 the Designating Party's permission. The Designating Party shall bear the burden and expense of
11 seeking protection in that court of its confidential material and nothing in these provisions should
12 be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful
13 directive from another Court.

10. NON-PARTY PROTECTED MATERIALS

15 (a) The terms of this Order are applicable to information produced by a
16 Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with
18 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
19 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

20 (b) In the event that a Party is required, by a valid discovery request, to
21 produce a Non-Party's confidential information in its possession and the Party is subject to an
22 agreement with the Non-Party not to produce the Non-Party's confidential information, then the
23 Party shall:

2. promptly provide the Non-Party with a copy of the
2 Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably
3 specific description of the information requested; and

6 (c) If the Non-Party fails to object or seek a protective order from this
7 Court within 14 days of receiving the notice and accompanying information, the Receiving Party
8 may produce the Non-Party's confidential information responsive to the discovery request. If the
9 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information
10 in its possession or control that is subject to the confidentiality agreement with the Non-Party
11 before a determination by the Court. Absent a court order to the contrary, the Non-Party shall bear
12 the burden and expense of seeking protection in this court of its Protected Material.

11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) cause such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
22 PROTECTED MATERIAL

If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return or destroy the specified information and any copies it has and may not sequester, use or disclose the information until the claim is resolved. This provision is not intended to modify

1 whatever procedure may be established in an e-discovery order that provides for production
 2 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
 3 parties reach an agreement on the effect of disclosure of a communication or information covered
 4 by the attorney-client privilege or work product protection, the parties may incorporate their
 5 agreement in the stipulated protective order submitted to the Court.

6 13. MISCELLANEOUS

7 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
 8 person to seek its modification by the Court in the future.

9 13.2 Right to Assert Other Objections. By stipulating to the entry of this
 10 Protective Order no Party waives any right it otherwise would have to object to disclosing or
 11 producing any information or item on any ground not addressed in this Stipulated Protective
 12 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
 13 the material covered by this Protective Order.

14 13.3 Filing Protected Material. Without written permission from the Designating
 15 Party or a court order secured after appropriate notice to all interested persons, a Party may not file
 16 in the public record in this action any Protected Material. A Party that seeks to file under seal any
 17 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
 18 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
 19 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
 20 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
 21 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
 22 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the Court, then the
 23 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule
 24 79-5(e) unless otherwise instructed by the Court.

25 14. FINAL DISPOSITION

26 Within 60 days after the Final Disposition of this action, as defined in paragraph 4,
 27 each Receiving Party must return all Protected Material to the Producing Party or destroy such

1 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
2 compilations, summaries, and any other format reproducing or capturing any of the Protected
3 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
4 submit a written certification to the Producing Party (and, if not the same person or entity, to the
5 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
6 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
7 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
8 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
9 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
10 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
11 product, and consultant and expert work product, even if such materials contain Protected
12 Material. Any such archival copies that contain or constitute Protected Material remain subject to
13 this Protective Order as set forth in Section 4 (DURATION).

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15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

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DATED: Feb. 10, 2011

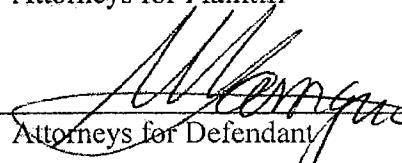


18 Attorneys for Plaintiff

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DATED: Feb. 9, 2011



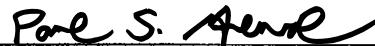
21 Attorneys for Defendant

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Date: March 10, 2011



25 Hon. Paul Singh Grewal

26 UNITED STATES MAGISTRATE JUDGE

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that I have
5 read in its entirety and understand the Stipulated Protective Order that was issued by the United
6 States District Court for the Northern District of California on _____ in the case of
7 *Reflex Packaging, Inc., v. Stephen Gould Corporation*, Case No. 5:10-cv-2909 (LHK). I agree to
8 comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
9 and acknowledge that failure to so comply could expose me to sanctions and punishment in the
10 nature of contempt. I solemnly promise that I will not disclose in any manner any information or
11 item that is subject to this Stipulated Protective Order to any person or entity except in strict
12 compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for
14 the Northern District of California for the purpose of enforcing the terms of this Stipulated
15 Protective Order, even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of
17 _____ [print or type full address and telephone number] as my California
18 agent for service of process in connection with this action or any proceedings related to
19 enforcement of this Stipulated Protective Order.

20 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____

24 [printed name]

25 Signature: _____

26 [signature]